



Attorney Docket No.: P00324US00

10-22 24 3612
App. Ser. No.: 09/833,847
Filing Date: April 12, 2001
Inventor: B.C. Hornady
Title: Apparatus for Covering Payloads
Examiner: Gutman, Hilary L
Art Unit: 3612

RE: APP. SER. NO. 09/833,847
Applicant: B.C. Hornady
Title: Apparatus for Covering Payloads

EV387964352US

IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

NOTIFICATION OF CLERICAL ERROR

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

The above identified applicant respectfully requests the Commissioner of Patents consider the enclosed remarks and enter the following submission into the record. Reconsideration in light of this submission is respectfully requested. If the Examiner requires additional action that may benefit from a telephone call, Applicant invites a call to its attorney of record, John Smith T (Reg. No. 39,840). E-mail correspondence and transactions to jsmitht@bradleyarant.com are authorized and encouraged.

As a safeguard against inadvertent error, we recently compared our files in this matter to the papers reflected in the Image File Wrapper files of the USPTO. Based on that comparison, we have discovered, and now bring to your attention, apparent clerical error in the compliance with the revised rules for amendment practice in connection with the paper filed November 4, 2003. Specifically, it appears from a review of that paper as shown in the Image File Wrapper available on the USPTO PAIR system, that the Listing of Claims section does not designate the additions and deletions to the claims made therein by underlining, strike-through, or other indication on the claims themselves. The correspondence filed on November 4, 2003 therefore may not have complied with the formal requirements for amendments to the claims set forth in the revised amendment practice rules dated June 30, 2003 (68 Fed. Reg. 38611).

We have concluded based on the comparison and a review of our files that by clerical error a draft version of the amendment was filed without the proper strike-out and underlining indications of changes made to the claims. Additionally, the amendment status ("Original" versus "Currently Amended") was inadvertently reversed among claims 11 and 12. The undersigned, being the attorney who submitted the paper in question, hereby states from first-hand knowledge that the omission of the indications

was by clerical error, only, and does not indicate any intent to deceive, mislead, or otherwise fail to make accurate representations or to fulfill our duty of candor to the Office. Because we did not become aware of the apparent clerical error until a few days ago, subsequent amendments were filed treating the Claims Listing in the November 4, 2003 paper as if that version was entered and compliant (i.e., with strike-out and underlining to indicate changes as compared to the claims set forth in the November 4, 2003 paper, not to the previous version of the claims).¹ These subsequent papers and claims were filed at my direction and with my oversight, based on the belief that the November 4, 2003 paper had been compliant, and likewise were filed in good faith, without intent to deceive, mislead or fail to comply. As evidence that the mistake was clerical in nature only, we submit the following information:

1. A number of the claims in the Listing of Claims are preceded with the status indicator “(Currently Amended)”, despite the fact that no changes are shown, which should have brought to the attention of the office the fact that clerical error had been made, and indicates the intent to comply with the rules.
2. The Response section of the paper refers to a number of the changes, despite the fact that no changes are shown, which should have brought to the attention of the office the fact that clerical error had been made, and indicates the intent to comply with the rules.
3. The subsequent remarks of the Examiner indicate that the Examiner was aware of amendments having been made to the claims, and specifically considered and relied upon certain of those amendments for further action, despite the apparent failure to specifically designate the changes in the required format.
4. Apparently recognizing the potential for error in complying with the new amendment practice, the Office established policy that, when non-compliant amendments are submitted, the applicant will be notified (See, Official Gazette, 23 September 2003, “If a preliminary amendment or a reply under 37 CFR 1.111 filed on or after July 30, 2003 includes one or more non-compliant sections, applicant will be notified via a Notice of Non-Compliant Amendment that the non-compliant section(s) needs to be re-submitted in compliant form within a period set by the Office.”) No such Notice was received by applicant.
5. We attach hereto a Listing of the Claims showing the November 4, 2003 changes in strikeout and underlining.

We request that you consider this information. We believe it would be appropriate for the Examiner in this matter to review the Listing of Claims attached hereto and advise us if any of these changes were unexpected, unconsidered, or would have been material to the issuance of the claims. We stress that we do not believe that to be the case and that the subsequent decisions by the Examiner appear to be consistent with the fact that changes were intended and made through the November 4, 2004 filing. This present submission is intended only to apprise the Examiner of the clerical mistake made. If

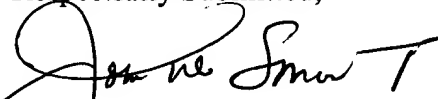
¹ Subsequent papers also relied on the amendment status indicators from the November 4 paper in further indicating amendment status (and in two specific cases - claims 15 and 19 on the February 23, 2004 paper - inadvertently listed “previously presented” as the status, even though changes to the text clearly were shown in strike-out and underlining).

Examiner deems this submission to warrant further examination by the Office, Applicant requests an opportunity to seek continuing examination.

The undersigned has personal knowledge of the facts of submission of the November 4, 2003 paper, and the facts stated above.

DATE: 10-21-04

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John W. Smith T". The signature is fluid and cursive, with a large loop at the beginning and a distinct "T" at the end.

John W. Smith T

Reg. No. 39,840

Bradley Arant Rose & White LLP